

17 April 2020

Mr Brett Whitworth
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By email: Brett.Whitworth@planning.nsw.gov.au

Attention: Amanda Harvey

Gateway Determination Review (PP_2016_CBANK_001_00)
30-46 Auburn Road, Regents Park

Dear Brett

I write to you in relation to a Planning Proposal to amend the Bankstown Local Environmental Plan (LEP) 2015 to amend the principal development controls for land at 30-46 Auburn Road, Regents Park.

It is with a level of disappointment that we now seek to have the gateway issued on 26 February 2020 reviewed. This disappointment stems not only from the time and process that has been taken to reach this point but that a process where we as applicants were encouraged to progress with the department in an open and collaborative process involving respected and experienced professionals to achieve a high quality and sustainable development outcome has ended in a need for an IPC review process.

It is noted that the review process was significantly disrupted due a general state election and restructure of the department. The review process did involve significant detailed discussion and responses to the process that we felt had resulted in a general understanding of an appropriate outcome for the land use controls in late 2019. However, after a period of further delay in late 2019 a gateway was issued that did not reflect those outcomes and was attached to an officer recommendation that we feel contains numerous errors and assumptions that does not seem to have had proper reflection to the significant rigorous evidence based study and detail supplied to the department over the course of the process.

We do not seek in this submission to address every item of error in the officers' report but seek to just focus on the specific requirement of what land use controls should be progressed based off the evidence from the process to enable a sustainable land use outcome.

On 26 February 2020, as delegate of the Minister for Planning and Public Spaces, it was determined under section 3.34(7) of the Environmental Planning and Assessment (EP&A) Act 1979 that the gateway determination dated 23 September 2016 (since altered) should be altered as follows:

1. *Delete condition 1(a) and replace with:*

a new condition 1(a) “reflect the outcomes of the urban design review by the Department of Planning Industry and Environment with a maximum FSR of 2:1 for the site and maximum building heights of 19 metres along the site’s Auburn Road frontage, 38 metres in the north-western corner of the site and 25 metres across the remainder of the site;”

The gateway condition is inconsistent with the recommendation and findings of the department’s own independent review which was issued at the culmination of a two-year process. McGregor Coxall, the department’s independent consultant recommended the following controls at the end of their review process:

- Maximum FSR – 2.4:1; and
- Maximum Height - 6 storeys – 23m; 8 storeys – 29m; and 12 storeys – 47m

Despite the representation in the officer’s report, it is clear that the methodology used to finalise these controls were accepted. It is noted that as the evidence of submissions and design shows (as will be explained in further detail) that dependant on the methodology of how number of storeys is calculated either a 2.4 or 2.6 density is the result as the GBA to GFA ratio efficiency calculation was agreed.

Therefore, due to the nature of the controls that diverted from this methodology (that determined an appropriate density and height in metres to accommodate an undulating site) reflected in the Gateway determination and in accordance with the *Department of Planning and Environment’s A Guide to Preparing LEPs*, a gateway determination review is sought. A gateway determination has been made whereby the conditions imposed are inconsistent with the advice received from the department’s independent consultant. The review request is therefore generally based on the following.

Height of Buildings

The height of buildings advanced by the urban design analysis undertaken by the department’s independent consultant and the department’s internal assessment provided for a desired outcome for the site that includes a maximum of 6 storeys along Auburn Road, 12 storeys at the north western corner, and 8 storeys for the remainder of the site.

The heights provided for in the altered gateway determination of 19 metres, 25 metres and 38 metres unfortunately, if applied in a part 4 process cannot achieve this objective. As such the review process showed the maximum heights as advised by the department’s consultant is different to that issued in the gateway. It is considered that what seems to have occurred at the last stage is that the heights in the gateway are not based off the outcomes of the review process but are taken from the blanket controls from the LEP height table. To achieve the urban scheme, it is very important that the heights to be adopted in future land use controls are accurate to meet the urban design objectives. We note the following heights in the MacGregor Coxall scheme (included lift overruns) are:

- 23 metres for 6 storeys;
- 29 metres for 8 storeys; and
- 47 metres for 12 storeys.

This review requests that these heights be adopted in a revised gateway determination.

Floor space ratio

The department's basis in the planning team report, unfortunately after a considerably long and previous collaborative process to achieve a sound urban outcome, is incorrect and unsubstantiated to inform the FSR for the site.

- On 9 October 2019, McGregor Coxall confirmed that the recommended FSR for the site was 2.4:1 and detailed the basis for this control (Attachment E).
- On 1 November 2019, a detailed response to the McGregor Coxall recommendation was provided to the department. The urban design methodology and principles which supported the layout, urban form, building footprints, access, egress and open space offering proposed by the McGregor Coxall Structure Plan were adopted and further refined to an actual development outcome ready for lodgement (Attachment F). This included compliance with SEPP 65 and ADG criteria as importantly this would inform the density.
- Importantly the agreement on density calculation methodology was achieved, not through a hypothetical analysis of other sites and general application of a efficiency ratio, but by an actual detailed design process to test the 80% efficiency rate applied by McGregor Coxall which upon that specific measure resulted in an efficiency of ranging from 80.56 – 81.57%.
- Architectus using a blanket efficiency methodology not based off a detailed site-specific design approach, provided a response to the revised report and density on 18 December 2019 (Attachment G), providing a density of 2.27:1, while remaining defiant on their original scheme and density of 1.75:1.
- The impact of the result of the gateway determined density of 2:1 from the previously considered density to support the urban scheme if maintained will undermine the original intent of the review process by limiting the ability of the project to provide a high-quality urban design and balanced affordable living environment. It also undermines the outcome of the independent review process that concluded an outcome of 2.4:1.
- To conclude, the process with a density of 2:1 seems to adopt a figure in between that recommended by the department's independent consultant (2.4:1) and the council's preferred density (1.75:1) that is based on a completely different scheme, not based on the site specific rigour applied during the review process.

Attachments

Attachment A – Gateway determination, September 2016

Attachment B – Concept Plan Stamped Plans by the Sydney South Planning Panel, dated 8 November 2017

Attachment C – McGregor Coxall Report, dated January 2019

Attachment D – Pacific Planning Response to McGregor Coxall Report, dated March 2019

Attachment E – McGregor Confirmation of final FSR dated October 2019

Attachment F – Pacific Planning advice on refinement to building footprints and design, dated 1 November 2019

Attachment G – Architectus Response dated December 2019

Attachment H – Altered Gateway determination, dated 26 February 2020

Attachment I – Pacific Planning refined scheme items, dated April 2020

Attachments J and K - Traffic Studies Lyle Marshall and Associates, dated June 2015 and K August 2015.

Introduction

On 23 September 2016, the department issued a gateway determination (Attachment A) that supported the progression of the Planning Proposal, subject to further refinement of the FSR as follows:

1. *Prior to undertaking community consultation the planning proposal is to be amended to:*
 - (a) *Reflect the outcome of FSR review (either 1.75:1 or 2.25:1, or an alternative FSR).*

The council did not amend their previous position on the control, while further refinement by the proponent was also advanced to the department to assist satisfy the condition.

Subsequently, in February 2018, the department commissioned McGregor Coxall as an independent consultant to undertake a comprehensive urban design review to propose an appropriate maximum FSR control for the site. The urban design report was completed in February 2019 and circulated to the proponent and council.

The proponent, while achieving a concept design DA approval in November 2017 for its preferred layout, decided in good faith to adopt the concept advanced by McGregor Coxall and undertaken further testing to refine the built outcome and form, and compliance with the ADG. Through a collaborative process working with the department and McGregor Coxall, a final FSR was arrived upon at 2.4:1 as confirmed in the communication at Attachment E. However, the gateway determination appears to have not reflected the years of study and refinement and misrepresented the findings of the independent consultant's recommendation.

A gateway review is therefore sought to amend the final height and FSR controls consistent with that recommended by McGregor Coxall and the refined DA level drawings prepared by the proponent.

Subject Site

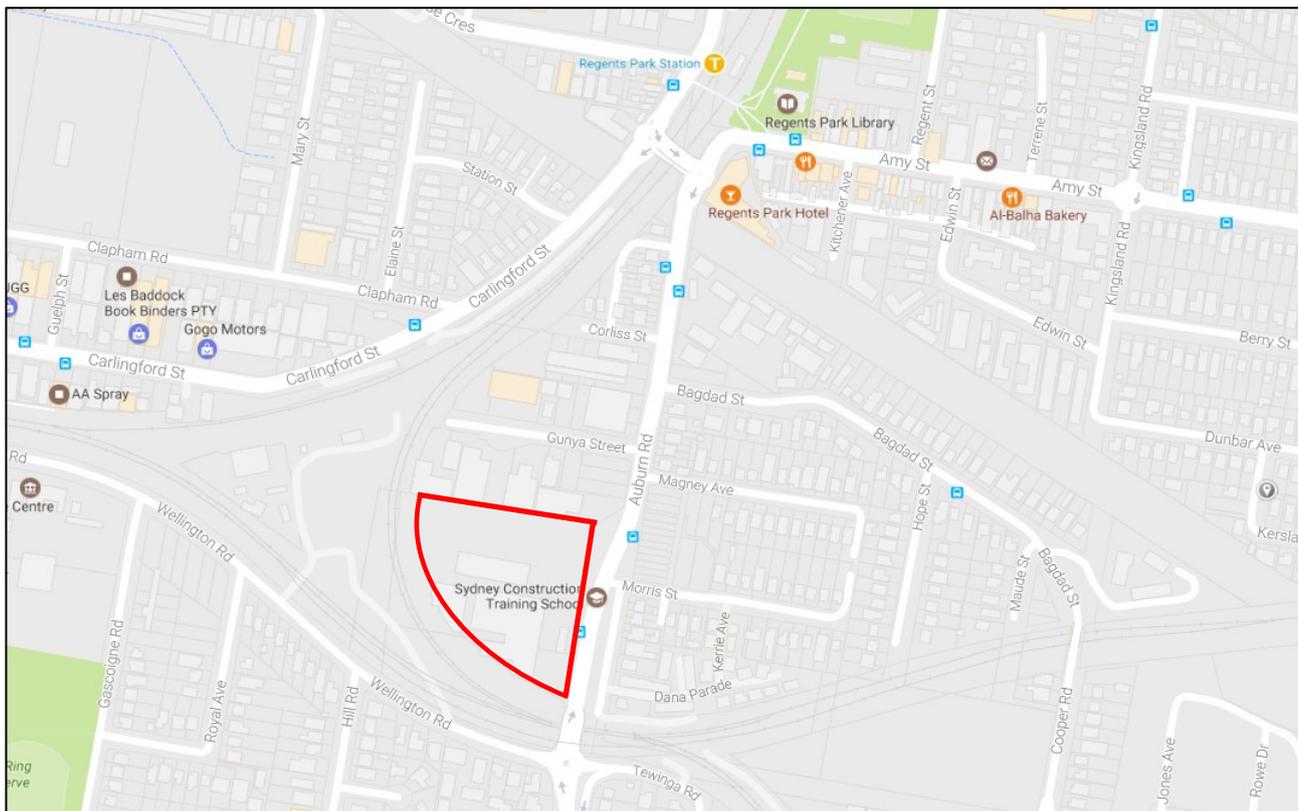


Figure 1: Site Location



Figure 2: Aerial view of the subject site

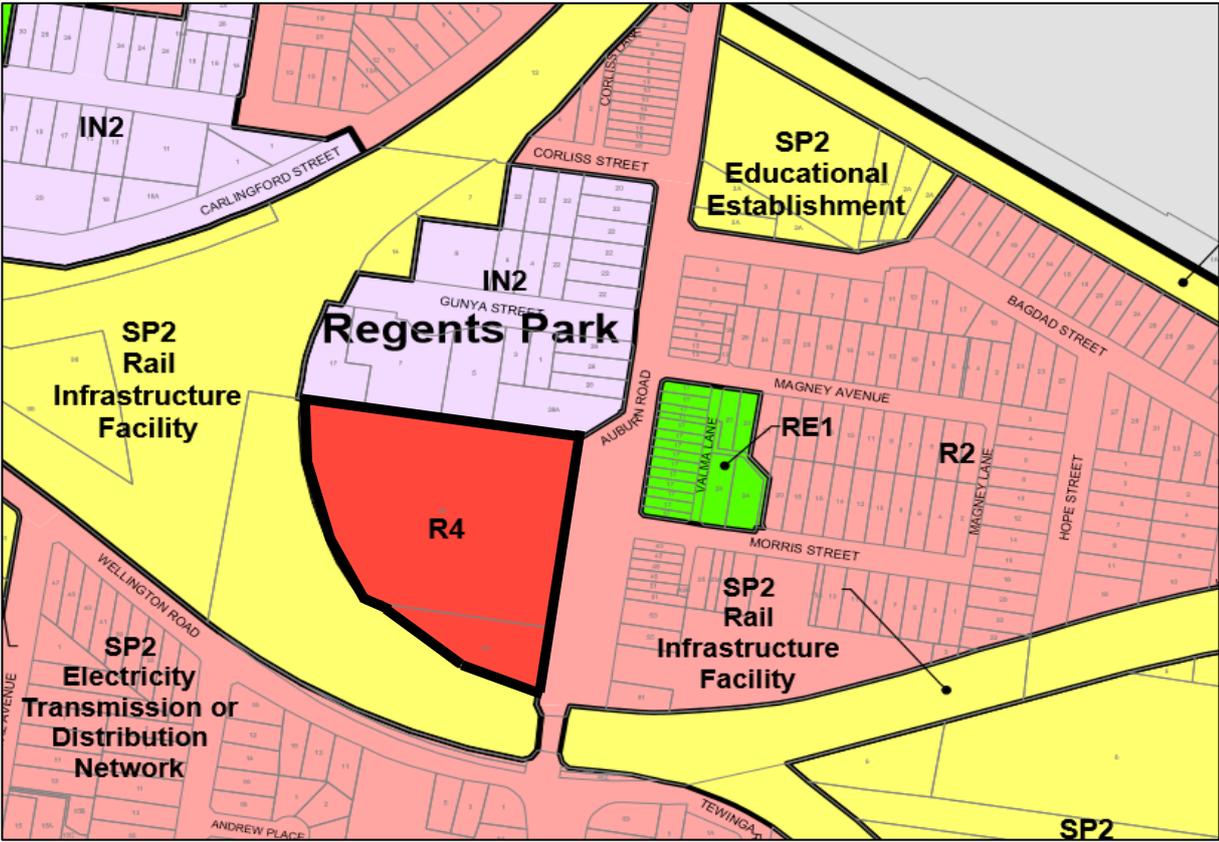


Figure 3: Zoning Map under Bankstown LEP 2015

The subject site is located at 30-46 Auburn Road, Regents Park, on a large consolidated industrial site on the western side of Auburn Road. The site is zoned for residential purposes and is well located in close proximity to facilities, services and public transport. Three train stations are located in the near vicinity, with Regents Park station being the closest at approximately 350 metres. The site is legally described as Lot 1 DP 656032 and Lot 2 DP 433938 and comprises a total land area of 21,180m².

Background

The subject site was rezoned for residential purposes when Amendment No 12 to Bankstown LEP 2001 was gazetted on the NSW Legislation website on 8 April 2005. This amendment recognised the suitability of the land and its locational attributes for residential purposes. The Bankstown LEP 2015 commenced on the 5 March 2015 with controls of 0.6:1 and 13 metres, which did not reflect the intent and zone objectives of the applicable R4 High Density Residential zone. It was generally agreed that the controls needed to be amended and a number of processes have been ongoing since 2013 to achieve the appropriate controls for the site and facilitate development.

Gateway determination

On 26 February 2020, an altered gateway determination was issued by the department.

1. *Delete condition 1(a) and replace with:
a new condition 1(a) “reflect the outcomes of the urban design review by the Department of Planning Industry and Environment with a maximum FSR of 2:1 for the site and maximum building heights of 19 metres along the site’s Auburn Road frontage, 38 metres in the north-western corner of the site and 25 metres across the remainder of the site;”*

The amending gateway determination is included at Attachment H.

Gateway Review Request

Maximum Height of Buildings

It is noted that the McGregor Coxall report and the altered gateway determination supports heights of 6 storeys along Auburn Road, 12 storeys to the north west of the site, and 8 storeys across the remainder of the site.

The LEP applies heights in metres, and a simple mathematical calculation is made to ascertain this number, based on the floor to ceiling height of each level and the lift overrun. The table below illustrates the various heights in metres that have been advanced and determined. In particular we note the difference between the heights in metres recommended by the independent McGregor Coxall study and that translated into the gateway determination.

	Gateway determination 23/09/2016	Architectus Scheme (different scheme)	McGregor Coxall (DPIE Independent Consultant)	Gateway determination	Requested.
Height	6 storeys – 19m 8 storeys – 25m 12 storeys – N/A	6 storeys – 23m 8 storeys – 30m 12 storeys – N/A	6 storeys – 23m 8 storeys – 29m 12 storeys – 47m	6 storeys – 19 m 8 storeys – 25 m 12 storeys – 38 m	6 storeys – 23m 8 storeys – 29m 12 storeys – 47m

The heights (in storeys) have been applied across the site, taking in to account the site levels, lift overrun and floor to ceiling heights, and confirmed the required heights in metres to achieve the desired heights in storeys to support the scheme. The attached design document (Attachment 1) provides a number of cross section illustrations, with the Auburn Road elevations illustrated below for example. This includes floor to ceiling heights of 3.1 metres and lift overruns of approximately 2 metres. To ensure a compliant application and to avoid a clause 4.6 request for the lift overruns and roof features, the heights listed in the table are required. It is noted that these align with the McGregor Coxall study and are similar to the Architectus advice for 6 and 8 levels. The heights listed have also had the benefit of a detailed shadow and visual analysis process by McGregor Coxall which has not been raised as a point of contention by any stakeholder.

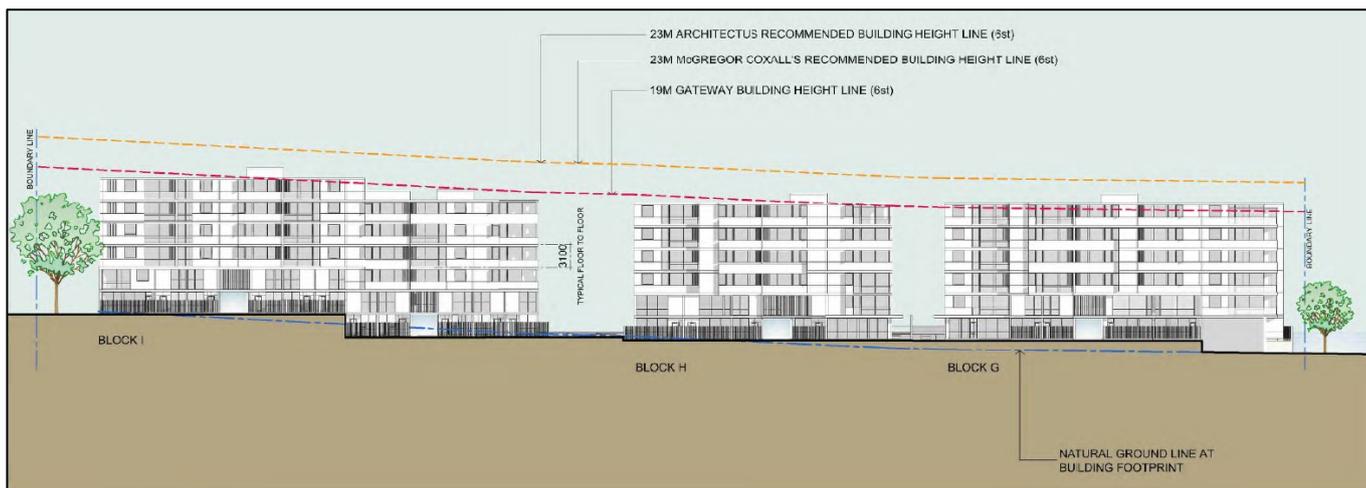


Figure 4: Auburn Road elevation

Ground floor terraces/townhouses

The methodology for the dwelling product was always intended to have a diversity of dwelling type applied. There was a conscience effort to target ground floor mezzanine townhouses in the scheme (family dwellings), social infrastructure floorspace and then a significant mix of varying types of apartments ranging from 1 – 3 bedrooms.

Apart from seeking to fulfil the R4 zone objective on housing diversity and a commercial objective of having a wide product type on offer for a build to rent market, there was also a deliberate primary urban outcome objective promoted by the project team to create activity on the ground and to promote social connectivity, interaction and walkability. In the original scheme these townhouses, albeit being with a mezzanine that had two internal levels, were on design counted as a single ground floor level in terms of external height in storeys.

The architectural finishes design from inception was also promoted to represent these externally as a single defined ground floor. Such methodology is also applied readily in mixed use developments where ground floor commercial may include an internal mezzanine floor. During the early design phases and consideration during the review this aspect was accepted at the time and never related as a concern or problem. At no time was this raised by the department as a problem. We were of the opinion the urban design outcome was encouraged whilst at the same time we readily adopted the McGregor Coxall scheme layout as these were main components for sustainability and quality of outcome where more rigid concerns of density were calculated once these directions were set. It is noted that this ground floor methodology was continued through all the variations of design height schemes.

Therefore, if the townhouses are counted as one level externally then the building has 8 levels; if the townhouses are counted as two storeys then the building would be 9 levels. (etc. 12 would be 13 and 6 would be 7).

Noting this design methodology, when we tested the scheme at the 6, 8 and 12 levels in our response (attachment F) to the McGregor Coxall letter (which advised a density of 2.4:1); our refined and detailed design scheme calculated at 2.6:1. (townhouses as one level). With that storey methodology removed at the late stage now, counting the townhouses as two storeys instead of one storey as explained above, results in a removal of the top-level floor of apartments and the density is then 2.4:1.

Maximum Floor Space Ratio

The original intent of the review process was to *propose an appropriate maximum FSR controls for the site*. Noting this objective significant detailed site-specific study was applied throughout the review process on layout, improved open space and various amenity aspects to achieve a density methodology calculation and then a land use number on density to support a sustainable scheme.

Significant detail on this issue is contained in the submission on March 2019 at attachment D and F November 2019. Reproduction of that study, consultation and discussion is not provided here but the reader will gain a significant understanding of the important issue of sustainability and density by reading those documents.

Additional study post Gateway

On receipt of the gateway in February 2020, further detailed interrogation of the issue was undertaken and provided to the department. These included further detailed documented study and reports in both PDF and DWG to enable detailed review as may be required:

List of items (Found at Attachment I):

- Architectural design set, April 2020
- 2.6:1 Design Set review explanation
- Design verification statement
- Elevation sections
- Setbacks and separation plan

These studies conclude and support that the gateway review controls requested, be supported.

Existing approved DA

The site benefits from an existing DA approved under the current land use controls in the form of a residential flat building scheme. With a view to provide further empirical evidence of what another development scheme on the site achieved in terms of GBA to GFA efficiency comment was sought from the design architects at Stanistic:

I have examined what was prepared in Jan 2017 for the masterplan DA. I understand an 85% efficiency of (GFA to envelope area) was used to generate the FSR of the various options.

I understand from the indicative floor plans prepared to supplement the masterplan concept that they also work to an efficiency of 85% +/- although this has not been verified at this stage. Based upon my experience, building form and indicative plans, an efficiency of 82% is a reasonable assumption to make at this early stage.

Examples of FSR Calculations

As urban planners and development managers we also have a number of large site-specific urban renewal projects across Sydney. These are either approved or in various stages of assessment in the plan making process. Without listing every scheme, (detail can be provided if required) the methodology described in the submission where a level of site-specific design detail is undertaken to calculate GBA/GFA efficiency to calculate a site FSR control is consistently applied in those cases. In every case, such is readily accepted by both PPAs and the Department as reliable in the consideration of issuing gateways and final making of EPIs when produced by registered professionals. This is not a surprise as it is appropriate to base land use controls off reliable site specific study evidence when so provided rather than a blanket approach contained in a guiding design document not specifically related to a site.

Various Density Designs 2.4, 2.6 and 3.45.

Comment has been made above on the schemes of 2.4 and 2.6 and how they were considered due to the calculation on heights. It is noted that in the officer's report, reference is made to a scheme of 3.45:1. For clarity, this design was provided during the review process in response to further considered height schemes tested by McGregor Coxall in the study.

These studies were promoted at the time due to the technical ability of the transport and roads infrastructure being tested and reviewed by council's experts concluding that on traffic and transport grounds the site can accommodate a scheme to a density of up to 4:1 (Attachment J and K). Further the scheme was requested to be considered by the department in submission as it provided the greatest ability for the provision of additional and wider public benefits. (Through simple economic dynamics as the higher density reduces the per unit cost of delivery paradigm enabling gained costs to be applied to other benefits). Whereas, this scheme can be progressed, and greater benefits can be provided in consultation, it is considered that there is little desire for other stakeholders for this to be contemplated.

Importantly and in terms of density consideration, this tested scheme also shows a similar density efficiency result on design of the other schemes of approximately 82%. It is noted that the department report suggests this scheme was measured and found to be 2.27:1. We cannot find any justification for this statement.

Architectus Response, December 2019

Architectus provided a response in December 2019 to the McGregor Coxall Report (Attachment G), the Pacific Response Report (Attachment D) and the final recommendation of McGregor Coxall (Attachment E).

In doing so, Architectus retained its previous recommendation of 1.75:1 based on a different layout and concept to that advanced and adopted through the independent consultant process. This includes facing apartments on to the train line, and inefficient building layout and a smaller area of open space. The proponent, meanwhile, in good faith and in the interests of achieving a collaboratively considered good outcome for the site and future and existing residents, adopted the concept and layout recommended by McGregor Coxall.

It is noted that Architectus criticises the McGregor Coxall scheme while also noting:

The above efficiencies have been reviewed by Architectus Principal, Farhad Haidari, who leads residential within our Sydney studio, and also by Michael Harrison, Architectus Strategic Advisor for Urban Design and Planning. The below statement has been provided by Farhad Haidari:

“We pursue relatively conservative efficiency rates for Planning proposals where a high level analysis is required due to lack of detailed design. The rates used are derived from analysing efficiencies at every stage of a number of current and past projects.

Architectus admit that that their analysis is based on other projects at other sites, and that detailed planning will need to occur at development application stage, rather than at the Planning Proposal stage where high level analysis has occurred.

Fortunately, the proponent, in good faith, in adopting the McGregor Coxall scheme, refined the layout and concept to DA level, to the point that a DA can be lodged. This was to ensure compliance with SEPP 65 and the ADG and ensure an accurate FSR could be issued and provided for the site for the exhibition of the planning proposal.

Therefore, there is little benefit in comparing the efficiencies, layout and ADG compliance of a different site with different attributes to which different design responses are required.

It is also noted that Architectus provide a critical analysis of the McGregor Coxall scheme as refined to ADG compliance standard. Architectus interpret heights (in storeys) that are not being sought as the basis for distance separation and setbacks. The scheme does not seek greater heights than 6; 8 and 12 storeys in establishing an FSR of 2.4:1. Therefore, the Architectus comments in relation to ADG compliance are not applicable as they relate to a scheme with alternate heights.

Thank you for your consideration of this submission and the supporting documentation. If you have any further questions, please do not hesitate to contact me on 0437 521 110.

Yours sincerely



James Mathews
Pacific Planning
Planning Director